

IN THE MATTER OF
THE APPLICATION OF
GEMMA T. CLARKE
FOR A MORTGAGE ORIGINATOR
LICENSE

BEFORE THE COMMISSIONER
OF
FINANCIAL REGULATION
Case No. DFR-EU-2007-065

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STATEMENT OF THE CASE

The hearing of the above captioned matter was held on September 4, 2007, and pursuant to Financial Institutions Article ("FI"), § 2-103 Annotated Code of Maryland was heard by the Deputy Commissioner of Financial Regulation, Joseph E. Rooney ("Deputy Commissioner"). This matter was scheduled for a hearing as a result of a decision by the Office of the Commissioner pursuant to FI § 11-607(e), to deny the Applicant, Gemma T. Clarke, a mortgage originator license [Comm'r Exhibit # 1]. The denial was based on the following: a) Applicant's failure to satisfy the Commissioner that the Applicant is of good moral character and has the general fitness to warrant the belief that the Applicant will act as a mortgage originator in a lawful, honest, fair and efficient manner as required by FI § 11-605(a)(2); and b) a prior felony or misdemeanor conviction of Applicant that is directly related to Applicant's fitness and qualification to act as a mortgage originator, in violation of FI §§ 11-605(b) and 11-615(a)(2). Documentation reviewed by the Office of the Commissioner reflects that on or about June 28, 2002, Applicant was convicted of felony conspiracy to commit crimes against the United States. [Comm'r Exhibit # 4].

Applicant was not represented by counsel. Christopher Young, Assistant Attorney General, appeared as presenter of evidence on behalf of the Commissioner. Thomas L. Gounaris, Assistant Attorney General served as counsel to the Commissioner. The proceedings were electronically

recorded.

FINDINGS OF FACT

From the testimony and exhibits presented, and with the opportunity to observe the demeanor of the witnesses and to assess their credibility, the Deputy Commissioner finds the relevant facts to be these:

1. On or about January 7, 2007, Applicant submitted an application for a mortgage originator license [Comm'r Exhibit # 4].
2. On or about June 28, 2002, Applicant was convicted by the United States District Court for the District of Columbia of conspiracy to commit crimes against the United States. Applicant was sentenced to 11 months imprisonment followed by three years supervised release, and was ordered to pay restitution in the amount of \$325,924.00 [Comm'r Exhibits # 4].

CONCLUSIONS OF LAW

Based on the Findings of Fact, the Deputy Commissioner concludes as a matter of law under FI § 11-605 that the Applicant should not be granted a mortgage originator license at this time. To qualify for a mortgage originator license, an applicant must satisfy the Commissioner that the applicant is of "good moral character and has general fitness to warrant the belief that the applicant will act as a mortgage originator in a lawful, honest, fair, and efficient manner". FI § 11-605(a)(2). The Commissioner may also deny an application for any reason that a license may be revoked or suspended under either the Mortgage Originator Law (FI § 11-601 *et seq.*) or the Mortgage Lender Law (FI § 11-501 *et seq.*) FI § 11-607(e)(2). Conviction under the laws of the United States or any state of a felony or misdemeanor that is directly related to the fitness and qualification of an individual to act as a mortgage originator is one such ground. FI § 11-615(a)(2).

When denying a license because of a criminal conviction, the Commissioner is required to consider the following: (1) the nature of the crime; (2) the relationship of the crime to the activities authorized by the license; (3) with respect to a felony, the relevance of the conviction to the fitness and qualification of the licensee or applicant to engage in the mortgage origination business; (4) the length of time since the conviction; and (5) the behavior and activities of the applicant since the conviction.

In this case, Applicant's crime was committed in or about 1996 in connection with tax preparation and bookkeeping services she provided on a contract basis. In particular, she prepared and provided to her employer erroneous forms W-2 and payroll information, based on information provided by her employer, and which she failed to verify. The documents were subsequently used to procure one or more fraudulent mortgage loans. While Applicant argues that she was unaware of and did not profit from the fraudulent use of the documents she had prepared, she, nevertheless, pleaded guilty of conspiracy to commit crimes against the United States, and was convicted of that crime. It would be inappropriate for the Deputy Commissioner to attempt to reevaluate Applicant's guilt in her criminal trial. The fact that she was convicted is conclusive proof of her guilt. *Attorney Grievance Commission of Md. v. Gerald Ney Klauber*, 289 Md. 446 (1981).

The nature of Applicant's crime could scarcely be more directly related to the activities authorized by a mortgage originator license. It involved a dishonest act of Applicant in the course of her employment preparing financial documents, which were ultimately used in connection with a mortgage loan. While it is true that the crime itself occurred more than 10 years ago, only a relatively short five years have passed since Applicant's conviction. There is no evidence of any other violations of law by Applicant, before or since her conviction; and strong character testimony was offered on her behalf,

but the serious nature of Applicant's crime and its close relationship to the mortgage originator license cannot be overlooked.

At the present time, the Deputy Commissioner is not reasonably satisfied that Applicant meets the qualifications for a mortgage originator license as required by FI § 11-605(a)(2). Therefore, the Deputy Commissioner must conclude, based upon the evidence before him, Applicant is not presently qualified to be granted a mortgage originator license. The Deputy Commissioner specifically notes that his denial of Applicant's license at this time does not act as a permanent bar to her reapplying for a mortgage originator license at a future time.

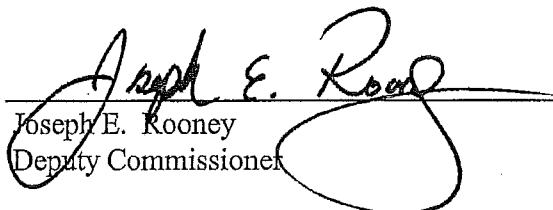
FINAL ORDER

In consideration of the foregoing Findings of Fact and Conclusions of Law, it is this 4th day of September, 2007, hereby **ORDERED** that:

Applicant, Gemma T. Clarke, is **DENIED** a mortgage originator license, pursuant to FI § 11-607(e).

Pursuant to State Govt. Art., Section 10-222, any party who is aggrieved by the Commissioner's decision, may file a petition for judicial review with the Circuit Court for the county where any party resides or has a principal place of business. Such petition must be filed within 30 days after Applicant's receipt of this Order (Md. Rule 7-203). The filing of a petition for judicial review does not automatically stay the enforcement of the Final Order.

COMMISSIONER OF FINANCIAL REGULATION


Joseph E. Rooney
Deputy Commissioner